

The individual or entity executing a Quotation (“Client”) agrees the following terms and conditions govern access to, and the provision of, the services by thinkproject UK Limited, registered in England and Wales (No. 05430351) with registered office North Warehouse, Gloucester Docks, Gloucester, Gloucestershire, GL1 2EP (thinkproject”) to Client. The agreement is effective as of the effective date as defined in the executed quotation (“Effective Date”). Your use of the Services (as defined below) is subject to this agreement.

1. DEFINITIONS, RULES OF INTERPRETATION

The definitions and rules of interpretation in this clause apply in this agreement.

1.1 Definitions:

Authorised Users: those Users and Superusers who are entitled to use the System under this agreement.

Authorised Representative: the person nominated by the Client, as having the authority to bind the Client in all matters relating to this agreement.

Business Day: a day (other than a Saturday or Sunday) on which banks in London are normally open for general business.

Commencement Date: the date the Services are due to commence, as set out in the Quotation.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in Clause 10.5 or Clause 10.6.

Client Data: the data inputted into the Software by Authorised Users.

Data Protection Legislation: the relevant UK Data Protection Legislation and any other applicable European Union legislation relating to personal data including the General Data Protection Regulation ((EU) 2016/679) and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data.

Documentation: means the quick start guides, video tutorials, help articles and specifications, on-line materials and other documents for the System, created, owned and maintained by thinkproject.

Fees: the fees payable to thinkproject, including Set up fees, Training fees and subscription fees, as described in the Quotation.

Mandatory Policies: a party’s business policies including its Data and Privacy Policy, Ethics and Anti-Bribery Policy and Modern Slavery and Human Trafficking Policy.

Normal Business Hours: means the hours between 0830hrs and 1730hrs GMT Monday to Friday excluding UK public holidays.

Quotation means thinkproject’s latest accepted written quotation to the Client identifying the specific Services, the period that the Services are to be provided, any limitations on how and where the Services may be used and the corresponding Fees.

Services: all services that thinkproject provides including Set up Services, Training, development work, hosting, support, maintenance and any other work or services that it is agreed are to be provided by thinkproject to the Client pursuant to the Quotation. “Service” shall be construed according to the context.

Set up Services: the set up and related work referred to in the Quotation to be performed by thinkproject which enables the Client to use the System.

Software: thinkproject’s proprietary software in machine-readable object code form only, including any error corrections, updates, upgrades, modifications and enhancements.

System: is the collection of thinkproject “software as a service” solutions listed in the Quotation and ordered by Client that are deployed at any time on a licensed software as a service basis, via the internet, including the mobile components as described in the Documentation.

Superuser: an individual person appointed by the Client, responsible for the setup and maintenance, User Accounts, permissions and governance.

Training: the training of Authorised Users referred to in the Quotation to be performed by thinkproject.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

User Account is a unique, non-transferable username and password assigned to a User which provides the User access to the System.

User is an individual person who has been provided a User Account in accordance with this agreement.

1.2 Rules of Interpretation

- a) Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, include the singular.

- b) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- c) A reference to a statute or statutory provision is a reference to it, as amended or replaced from time to time.
- d) A reference to **writing** or **written** includes e-mail provided that in the case of the Client, e-mail has been sent by the Authorised Representative.
- e) If there is an inconsistency between any of the provisions in the main body of this agreement and the Quotation, the provisions in the main body of this agreement shall prevail.

2. SOFTWARE LICENSE

- 2.1 thinkproject hereby grants to the Client on and subject to the terms and conditions of this agreement a non-exclusive, non-transferable licence to allow Authorised Users to access the System through the Services and the rights provided under this Clause 2 are granted to the Client only for the specific scope set out in the Quotation, and unless expressly indicated the right shall not be considered granted to any subsidiary or holding company of the Client.
- 2.2 Terms and conditions or purchasing terms of the Client shall not apply unless thinkproject has expressly agreed to their application in writing. This applies even if thinkproject does not expressly object to Client's terms and conditions or Client has included its terms and conditions in or with a purchase order, order for payment or other document or in any other manner of doing business between the parties or according to industry custom or otherwise. Even if thinkproject refers to a letter containing or referring to the Client's or a third party's terms and conditions, this does not constitute an agreement to the application of those terms and conditions.

3. CONDITIONS OF LICENSE

3.1 The Client shall not:

- a) copy, duplicate, modify, create derivative works from or distribute all or any portion of the Software; or
- b) reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
- c) access all or any part of the Software or Services in order to build a product or service which competes with the Software and/or the Services; or
- d) use the Software or Services to provide services to third parties.

3.2 The Client shall:

- a) appoint an Authorised Representative, who shall have the authority to contractually bind the Client on all matters relating to this agreement;
- b) provide thinkproject with the information necessary to enable Set up Services as identified in the Quotation;
- c) be responsible for appointing and supervising Superusers who will undertake support and administration duties for day-to-day matters on behalf of the Client relating to the System, including the creation of new User Accounts, Client Contract(s) set up, and maintenance of User roles and permissions. thinkproject will provide Training for Superusers in accordance with the Quotation but will not assume any responsibility for their acts or omissions;
- d) provide all hardware, network connections and telecommunications links to the internet and other things necessary to access the Services. thinkproject shall not assume any responsibility for any problems, delays, delivery failures, nor any loss or damage arising from the Client's use of such hardware or failure of such telecommunication links or other things; and
- e) implement appropriate measures to prevent and report any unauthorised use of the Services, ensure that Authorised Users keep their User Account credentials secret and do not expose the Services to viruses or unlawful, harmful or infringing content or activity.

4. CLIENT DATA

- 4.1 The Client shall own all rights, title and interest in and to all of the Client Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of such Client Data. thinkproject shall have a non-exclusive license to store, distribute, publish, export, adapt, edit and translate the Client Data to the extent reasonably required in connection with this agreement.
- 4.2 Thinkproject shall maintain its Information Security Management System, associated infrastructure and disaster recovery procedures and targets including; Client Data recovery within 24 hours and Client Data loss not to exceed 48 hours.

- 4.3** In the event of any loss or damage to Client Data, the Client's sole and exclusive remedy against thinkproject shall be for thinkproject to use reasonable commercial endeavours to restore the lost or damaged Client Data from the latest back-up of such Client Data maintained by thinkproject.

5. PROJECT DATA

5.1 Utilisation of Project Data by thinkproject

- a) For purposes of development and improvement of its services for all clients, thinkproject may gather, store, analyze and evaluate data, which have been generated by Client's use of the Services ('Project Data'), and utilize the results of such evaluations.
- b) Should Project Data within the meaning of Clause 5.1 include personal data, example given included in documents saved by the Client, these personal data will be anonymized by thinkproject and solely used in such anonymized form to make sure that Client or other subjects cannot be identified.
- c) thinkproject will make sure that no person can be made identifiable in results of evaluations nor that anonymized data included in the databases for analysis and evaluation can be de-anonymized.

5.2 Authorisation

The Client grants to thinkproject, for an unlimited period of time, the non-exclusive, worldwide, transferable right to use the Project Data to the extent and for the purpose as defined in Clause 5 a).

6. DATA PROTECTION

- 6.1** The parties acknowledge that in utilising the Services the Client may input into the System the following personal data relating to a data subject: First and last names; e-mail address; postal address; contact telephone number(s) and job title or function. The parties further acknowledge that for the purposes of the Data Protection Legislation, the Client is the controller and thinkproject is the processor of such personal data. Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 6 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. thinkproject may, at any time on not less than 20 Business Days' notice, revise this Clause 6 to comply with any changes to the Data Protection Legislation.
- 6.2** The Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any personal data to thinkproject for the duration and purposes of this agreement.
- 6.3** Thinkproject shall, in relation to any personal data processed in connection with the performance by thinkproject of its obligations under this agreement:
- a) process that personal data only on the documented written instructions of the Client unless thinkproject is required by law to do so. If thinkproject is required to carry out additional processing by law, it will inform the Client before the processing takes place (unless the law prohibits this);
 - b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - c) not transfer any personal data outside of the European Economic Area and the United Kingdom unless the prior written consent of the Client has been obtained and the following conditions are fulfilled: (i) the Client or thinkproject has provided appropriate safeguards in relation to the transfer; (ii) the data subject has enforceable rights and effective legal remedies; (iii) thinkproject complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and (iv) thinkproject complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the personal data;
 - d) assist the Client, at the Client's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - e) notify the Client without undue delay on becoming aware of a personal data breach;

- f) at the written direction of the Client, delete or return personal data and copies thereof to the Client on termination of the agreement unless required by law to store the personal data;
- g) without prejudice to the generality of Clause 10, will ensure anyone it authorises to process the personal data is subject to an appropriate commitment of confidentiality; and
- h) maintain complete and accurate records and information to demonstrate its compliance with this Clause 6 and allow for compliance audits by the Client or the Client's designated auditor and immediately inform the Client if, in the opinion of thinkproject, an instruction infringes the Data Protection Legislation.

6.4 The Client consents to thinkproject appointing a third-party processor of personal data under this agreement as reflected in thinkproject's online Privacy Policy. thinkproject confirms that it has entered or (as the case may be) will enter into a written agreement with the third-party processor, incorporating terms which reflect and will continue to reflect the requirements the Data Protection Legislation. thinkproject will remain liable to the Client for any failure of a sub-processor to meet its Data Protection obligations, as set out herein.

6.5 When appointing a third-party processor of personal data in accordance with Clause 6.4 above, thinkproject will give the Client reasonable advance notice of such appointment. If the Client objects in writing to the appointment of a third-party processor, either party shall have the right to terminate this agreement with immediate effect, it being agreed that such termination shall not give rise to any liability to either party on account of such termination.

7. CHARGES AND PAYMENT

7.1 The Client shall pay to thinkproject the Set-up, Training and other fees referred to in the Quotation and thinkproject shall invoice the Client the Fees on the dates and frequency set out in the Quotation.

7.2 The Client's subscription fee to the System referred to in the Quotation shall commence on the Commencement Date and shall continue until termination of this agreement in accordance with Clause 13.

7.3 All Fees payable by Client are expressed as net amounts in pounds sterling. Fees are exclusive of any and all taxes which may apply including VAT. Where VAT is to apply the Client shall in addition pay an amount equal to any VAT chargeable on the Fees on delivery of a VAT invoice.

7.4 Each invoice is due and payable 30 days after the invoice date. If thinkproject has not received a due payment it may remind the Client by giving notification. If a due payment is not made within 14 days after this reminder notification and the invoice is not disputed in good faith, then without prejudice to any other rights and remedies of thinkproject:

- (a) thinkproject shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of the Bank of England, commencing on the due date and continuing until fully paid, whether before or after judgment.

7.5 Thinkproject may increase fees by up to 5% on, or at a time following, each anniversary of the Commencement Date. A fee increase has effect from the later of the anniversary of the Commencement Date and a period of sixty days from thinkproject's notification that fees are to increase.

8. CHANGE PROCEDURE

8.1 If the Client wishes to change the scope of the Services, it submits details of the requested change to thinkproject in writing. Thinkproject is under no obligation to proceed with the requested change. Within three weeks of receiving the requested change thinkproject shall either:

- (a) submit a new Quotation to the Client for acceptance; or
- (b) inform the Client that it is unwilling to change the scope of Services, stating its reasons.

8.2 If the Client accepts a new Quotation all previous Quotations are superseded and the scope of Services are changed accordingly.

9. PROPRIETARY RIGHTS

- 9.1** The Client acknowledges and agrees that thinkproject and/or its licensors owns all intellectual property rights in the System and Services, including without limitation the Software, the Documentation and any other materials which thinkproject has created or may create in connection with the Services, together with any suggestions, ideas, feedback, enhancements or other information provided by the Client, Users or Superusers in connection with the Services. This agreement does not grant the Client any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software, Services or any related documentation, including the Documentation.
- 9.2** Thinkproject confirms that it has all the rights in relation to the Software that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

10. CONFIDENTIALITY

- 10.1** Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party; or
 - (b) was in the other party's lawful possession before the disclosure; or
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 10.2** Subject to Clause 10.4, each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 10.3** Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 10.4** A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 10.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 10.5** The Client acknowledges that any material provided to or accessible by the Client in connection with the Services and this agreement, including without limitation the Software, Training and Documentation constitutes thinkproject's Confidential Information.
- 10.6** Thinkproject acknowledges that the Client Data is the Confidential Information of the Client.
- 10.7** No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).
- 10.8** The above provisions of this Clause 10 shall survive termination of this agreement, however arising.

11. INDEMNITY

- 11.1** The Client shall defend, indemnify and hold harmless thinkproject against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Client's use of the Software or Services, provided that:
- (a) the Client is given prompt notice of any such claim;
 - (b) thinkproject provides reasonable co-operation to the Client in the defence and settlement of such claim, at the Client's expense; and
 - (c) the Client is given sole authority to defend or settle the claim.

- 11.2** Thinkproject shall defend the Client, its officers, directors and employees against any claim that the Software infringes any patent, copyright, database right or right of confidentiality, and shall indemnify the Client for any amounts awarded against the Client in final or unappealed judgment or settlement of such claims, provided that:
- (a) thinkproject is given prompt notice of any such claim;
 - (b) the Client provides reasonable co-operation to thinkproject in the defence and settlement of such claim, at thinkproject's expense; and
 - (c) thinkproject is given sole authority to defend or settle the claim.
- 11.3** In the defence or settlement of the claim, thinkproject may obtain for the Client the right to continue using the Software, replace or modify the Software so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this agreement without liability to the Client.
- 11.4** Thinkproject shall have no liability if the alleged infringement is based on:
- (a) a modification of the Software by anyone other than thinkproject or its authorised subcontractors; or
 - (b) the Client's use of the Software in a manner contrary to the instructions given to the Client by thinkproject;
 - (c) the Client's use of the Software after notice of the alleged or actual infringement from thinkproject or any appropriate authority.
- 11.5** The foregoing sets out the Client's sole and exclusive rights and remedies, and thinkproject's entire obligations and liability, for patent, copyright, database or right of confidentiality infringement.

12. LIMITATION OF LIABILITY

- 12.1** This Clause 12 sets out the entire financial liability of thinkproject (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client:
- (a) arising under or in connection with this agreement;
 - (b) in respect of any use made by the Client of the Services or the Software, or any part of them; and
 - (c) in respect of any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 12.2** Except as expressly and specifically provided in this agreement:
- (a) the Client assumes sole responsibility for results obtained from the use of the Software and the Services by the Client and Authorised Users, and for conclusions drawn from such use. thinkproject shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to thinkproject by the Client in connection with the Services, or any actions taken by thinkproject at the Client's direction; and
 - (d) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement.
- 12.3** Nothing in this agreement excludes the liability of thinkproject:
- (a) for death or personal injury caused by thinkproject's negligence; or
 - (b) for fraud or fraudulent misrepresentation.
- 12.4** Neither party shall be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent), restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses, or pure economic loss, or for any special, indirect or consequential loss costs, damages, charges or expenses however arising under this agreement.
- 12.5** Thinkproject's total aggregate liability in contract (including in respect of the indemnity at Clause 11.2), tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to £2,000,000.

13. TERMINATION

13.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 21 days after being notified in writing to do so; if the other party is insolvent or unable to pay its debts, suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business and/or or an administrative receiver; is appointed over the assets of the other party.

13.2 On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate;
- (b) each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party;
- (c) thinkproject may destroy or otherwise dispose of any of the Client Data in its possession unless thinkproject receives, no later than 30 days after the effective date of the termination of this agreement, a written request, for the delivery to the Client of the then most recent back-up of the Client Data. thinkproject shall use reasonable commercial endeavours to deliver the back-up to the Client within 30 days of its receipt of such a written request, provided that the Client has, at that time, paid all fees and charges outstanding at the date of termination; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

14 FORCE MAJEURE

14.1 Apart from Client's obligation to pay the agreed remuneration, neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network or the internet, act of God, acts of government war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm, acts of terror, strikes, telecommunications or network failures or delays, computer failures involving hardware or software not within thinkproject's possession or reasonable control and acts of vandalism (including malicious cyber-attack), provided that the party claiming relief has taken reasonable technical measures to anticipate such eventualities.

14.2 In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for three months, the party not affected may terminate this agreement by giving 30 days' written notice to the other party.

15 MISCELLANEOUS

15.1 This agreement constitutes the entire agreement between the parties.

15.2 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or thinkproject and the Authorised Representative).

15.3 Any notice required to be given under this agreement shall be in writing and shall be delivered by e-mail with a copy sent by recorded delivery post to the other party at its registered office or the address set out in this agreement.

15.4 A waiver of any right under this agreement is only effective if it is in writing.

15.5 Except as expressly provided for in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

15.6 The Client shall not, without the prior written consent of thinkproject, assign, transfer, charge, sub-contract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under this agreement.

15.7 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership, agency or joint venture between any of the parties. The Client may not make any commitment to third parties on behalf of thinkproject.

15.8 This agreement does not give rise to any rights under the UK Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

16 GOVERNING LAW & JURISDICTION

This agreement is governed by, and construed in accordance with, the laws of England & Wales. The parties irrevocably agree that the courts of England & Wales have exclusive jurisdiction in connection with this agreement.